

J.G., Appellant

**U.S. POSTAL SERVICE, WILLIMANTIC POST
OFFICE, Willimantic, CT, Employer**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

¹ It appears from appellant's AB-1 Form that he is appealing a June 1, 2020 decision. For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. 20 C.F.R. § 501.2(e). As the June 1, 2020 decision was issued more than 180 days prior to January 11, 2021, the date appellant filed his appeal with the Board, that decision is outside of the Board's jurisdiction. The only decision within the Board's jurisdiction is the October 16, 2020 merit decision.

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of his oral argument request, appellant asserted that oral argument should be granted to allow him to explain that OWCP was aware that he was in receipt of age-related Social Security Administration (SSA) retirement benefits at the time it issued Federal Employees' Compensation Act compensation, and that he fully reported his receipt of SSA age-related retirement benefits on EN1032 forms. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.⁴

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$380.16 for the period July 19 through August 15, 2020, for which he was without fault, because of an underwithholding of a life insurance premium; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether it properly required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On December 30, 2017 appellant, then an 80-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 29, 2017 he sustained a right shoulder injury when he slipped and fell while in the performance of duty. He stopped work on December 30, 2017 and did not return. OWCP accepted the claim for a right rotator cuff sprain. It paid appellant wage-loss compensation for total disability on the supplemental compensation rolls commencing February 13, 2018.

In a letter dated July 9, 2018, OWCP notified appellant that it was placing him on the periodic compensation rolls, effective June 24, 2018. It advised him that it was making deductions for optional life insurance (OLI) premiums from his compensation payments in the amount of \$380.16 every 28 days. OWCP requested that appellant notify it immediately if such benefits were not being deducted from his wage-loss compensation.

An August 4, 2020 periodic rolls payment plate for the period July 19 through August 15, 2020 showed no deduction for OLI.

In an overpayment identification memorandum dated August 21, 2020, OWCP noted that the OLI premium of \$380.16 had not been deducted from appellant's periodic rolls payment for the period July 19 through August 15, 2020.

In a preliminary overpayment determination dated August 25, 2020, OWCP notified appellant that he had received an overpayment of compensation in the amount of \$380.16, for the period July 19 through August 15, 2020, because it did not deduct the OLI premium from his wage-loss compensation. It further advised him of its preliminary overpayment determination that he was without fault in the creation of the overpayment and requested that he complete an overpayment action request form and an overpayment recovery questionnaire (Form OWCP-20). OWCP requested that he provide supporting financial documentation, including income tax returns, bank account statements, bills and cancelled checks, pay slips, and any other records to

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that appellant submitted additional evidence to OWCP following the October 16, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

support his reported income and expenses. Additionally, it notified appellant that he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. OWCP allotted 30 days for him to respond. Appellant did not respond.

By decision dated October 16, 2020, OWCP finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$380.16 for the period July 19 through August 15, 2020, as OWCP had not deducted the OLI premium from his FECA compensation. It further found that he was without fault in creation of the overpayment, but that he was not eligible for waiver of recovery of the overpayment as he had not submitted financial evidence to substantiate that adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$100.00 from his continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees Group Life Insurance (FEGLI) Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance (BLI) and one or more of the options.⁵ The coverage for BLI is effective unless waived,⁶ and premiums for basic and optional life insurance (OLI) coverage are deducted from the employee's pay.⁷ Upon retirement or upon separation from the employing establishment or being placed on the FECA periodic compensation rolls, an employee may choose to continue BLI and OLI coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁸ BLI coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;⁹ however, the employee is responsible for payment of premiums for OLI coverage which is accomplished by authorizing withholdings from his or her compensation.¹⁰

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by 2 percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by 1 percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a

⁵ 5 U.S.C. § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8706.

⁹ *Id.* at § 8707(b)(2).

¹⁰ *Id.* at § 8706(b)(3)(B). See *J.H.*, Docket No. 20-0281 (issued May 18, 2021); *B.B.*, Docket No. 17-1733 (issued March 26, 2018).

greater premium).¹¹ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹²

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹³ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$380.16, for the period July 19 through August 15, 2020, for which he was without fault, because OWCP did not withhold an OLI life insurance premium from his FECA compensation.

OWCP did not deduct the OLI premium of \$380.16 from appellant's wage-loss compensation benefits for the period July 19 through August 15, 2020. As such, it calculated the amount of the resulting overpayment as \$380.16. The record contains the compensation payment record, as well as an overpayment worksheet explaining the overpayment calculation and how the overpayment occurred.

While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for OLI at whatever option he or she had selected.¹⁵ Moreover, as noted, when an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM upon discovery of the error.¹⁶

The Board thus finds that OWCP properly determined the fact and amount of the overpayment. As OWCP failed to properly deduct OLI premiums for the period July 19 through August 15, 2020, appellant received an overpayment of \$380.16 during this period.¹⁷

¹¹ See *I.J.*, Docket No. 19-1672 (issued March 10, 2020); *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹² 5 U.S.C. § 8707(d); see also *J.H.*, *supra* note 10; *B.B.*, *supra* note 10.

¹³ *Id.* at § 8102(a).

¹⁴ *Id.* at § 8129(a).

¹⁵ 5 C.F.R. § 870.504(b); *J.H.*, *supra* note 10; *S.P.*, Docket No. 17-1888 (issued July 18, 2018). Cf. *Charles F. Huisman*, Docket No. 93-2298 (issued January 29, 1996); *John E. Rowland*, 39 ECAB 1377 (1988).

¹⁶ 5 U.S.C. § 8102.

¹⁷ *J.H.*, *supra* note 10; see *I.J.*, *supra* note 11; *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *R.W.*, Docket No. 19-0451 (issued August 7, 2019).

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁸

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁹ Additionally, recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²⁰

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. This information is also used to determine the repayment schedule, if necessary.²¹ Failure to submit the requested information within 30 days of the request shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished.²²

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

The fact that a claimant is without fault in the creation of an overpayment does not preclude OWCP from recovering the overpayment.²³ As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity

¹⁸ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437; *see* A.S., Docket No. 17-0606 (issued December 21, 2017).

¹⁹ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4(a)(2) (September 2020).

²⁰ *Id.* at § 10.437(a)(b).

²¹ *Id.* at § 10.438(a).

²² *Id.* at § 10.438(b).

²³ *See* George A. Rodriguez, 57 ECAB 224 (2005); Joyce O. Diaz, 51 ECAB 124 (1999).

and good conscience.²⁴ Appellant, however, has the responsibility to provide the appropriate financial information and documentation to OWCP.²⁵

In its preliminary overpayment determination dated August 25, 2020, OWCP explained the importance of providing the completed Form OWCP-20 and financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not respond. As such, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.²⁶

As appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine his eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁷

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides that when an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²⁸

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$100.00 from appellant's continuing compensation payments, every 28 days.

OWCP provided a Form OWCP-20 to appellant with the August 25, 2020 preliminary overpayment determination. Appellant did not complete the form or provide the necessary financial information to support his income and expenses prior to the final October 16, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²⁹

²⁴ 20 C.F.R. § 10.436.

²⁵ *Id.* at § 10.438; *see also N.J.*, Docket No. 19-1170 (issued January 10, 2020); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²⁶ *D.H.*, Docket No. 19-0384 (issued August 12, 2019).

²⁷ *Id.*

²⁸ 20 C.F.R. § 10.441(a).

²⁹ *Id.* at § 10.438. *See also A.F.*, Docket No. 19-0054 (issued June 12, 2019).

As appellant did not submit the financial documentation to OWCP as requested, the Board finds that OWCP acted reasonably in directing recovery of the \$380.16 overpayment at the rate of \$100.00 every 28 days from his continuing compensation payments.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$380.16 for the period July 19 through August 15, 2020 because of an underwithholding of a life insurance premium. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required repayment of the overpayment by deducting \$100.00 from his continuing compensation payments every 28 days.

IT IS HEREBY ORDERED THAT the October 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board